

**INTERPLEADER DEFENDANT OCTAVIO PENA'S MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFF'S CROSS-MOTION TO DEPOSIT FUNDS INTO
COURT REGISTRY**

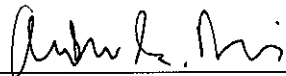
Interpleader defendant, Octavio Pena, by his undersigned counsel, submits this memorandum in support of the cross-motion made by plaintiff, Zeichner, Ellman & Krause LLP, pursuant to Rule 67 of the Federal Rules of Civil Procedure, to deposit with the Registry of the Court the funds of \$499,766.93, plus interest earned thereon, and over which funds he asserts sole and rightful claim, under a contract, dated July 13, 2001, between him and interpleader defendant Kathy Cokus.

Mr. Pena answered plaintiff's complaint for interpleader, on November 16, 2007, consenting to the Court's jurisdiction in this matter and to the interpleader of these funds. On the same date he asserted cross-claims against Cokus which he amended on November 20, 2007, seeking to have the Court award these funds to him.

It is uncontested that the Court has jurisdiction over all parties and claims in this action. There is no basis for the Court to dismiss this action in deference to the action pending in Pennsylvania state court under the abstention doctrine as articulated by *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). Accordingly, the Court should exercise the jurisdiction it has over this action and allow Plaintiff to deposit with the Court the funds to which Cokus and Pena each claim entitlement but to which Plaintiff has no claim.

For the foregoing reasons, the Court should grant Plaintiff's cross-motion to deposit funds into the Registry of the Court.

Dated: New York, New York
December 4, 2007

By: 

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